

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

**ROBERT S. CHEATLE, JR. and NANCY A. CHEATLE, husband and wife,**

**Plaintiffs,**

**VS.**

**CIVIL ACTION NO.  
02-CV-4405**

**DAVID A. KATZ and DAWN KATZ**  
and

**PARADISE CONTRACTORS, INC.**

and

**PARADISE PINES HOMEOWNERS ASSOCIATION**

and

**PARADISE MANAGEMENT GROUP, INC.** :

and

**PARADISE DEVELOPMENT GROUP, INC., :**

**Defendants.**

**PLAINTIFFS' ANSWER AND AFFIRMATIVE DEFENSES**  
**TO DEFENDANTS' COUNTERCLAIM**

## Count I

76. Denied. Upon information and belief, Plaintiffs have paid all amounts currently due and owing under the Construction Contract.

77. Denied. The alleged “sum unpaid” of \$50,000 represents the amount the Plaintiffs and David Katz agreed to place in escrow pending David Katz’s completion of a comprehensive “punch list” of outstanding and incomplete items in the Plaintiffs’ home. According to David Katz’s hand-written note on the “punch list,” the unpaid sum would become

due and owing thirty (30) days after David Katz completed all items. Although the “punch list” was dated July 26, 2001 and initialed by “DAK,” David Katz has not yet completed all items on the agreed-upon punch list, and numerous items of damage and claims for remediation constitute a defense to payment.

78. Admitted in part and denied in part. It is admitted that David Katz alleges he paid Sun Electric a partial payment for work performed at the Plaintiffs’ residence. It is denied, however, that the Plaintiffs owe Defendants any reimbursement. The remaining allegations of Paragraph 78 are denied.

WHEREFORE, Plaintiffs Robert S. Cheatle, Jr. and Nancy A. Cheatle demand judgment in their favor and against Defendants together with an award of costs, attorneys’ fees, and such other relief as this Court deems just and equitable.

## **Count II**

79. Denied.

80. It is admitted that David Katz entered into a Construction Contract with the Plaintiffs. The remaining allegations are denied.

81. Denied.

WHEREFORE, Plaintiffs Robert S. Cheatle, Jr. and Nancy A. Cheatle demand judgment in their favor and against Defendants together with an award of costs, attorneys’ fees, and such other relief as this Court deems just and equitable.

**AFFIRMATIVE DEFENSES**

82. Defendants' Counterclaim fails to state a claim for relief against Plaintiffs.

83. Defendants' Counterclaim, particularly Count II, is a frivolous claim for which Plaintiffs shall seek attorneys' fees pursuant to Federal Rule of Civil Procedure 11, 28 U.S.C. § 1927, and/or the Court's inherent powers.

84. Defendants' Counterclaim is barred by the doctrine of estoppel.

85. Defendants' Counterclaim is barred and/or limited by failure of consideration.

86. Defendants' Counterclaim is barred and/or limited by justification.

87. Defendants' Counterclaim is barred and/or limited by the doctrine of laches.

88. Defendants' Counterclaim is barred and/or limited by statute of frauds.

89. Defendants' Counterclaim is barred and/or limited by the doctrine of unclean hands.

90. Defendants' Counterclaim is barred and/or limited by the doctrine of waiver.

WHEREFORE, Plaintiffs Robert S. Cheatle, Jr. and Nancy A. Cheatle demand judgment in their favor and against Defendants together with an award of costs, attorneys' fees, and such other relief as this Court deems just and equitable.

Respectfully submitted,

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Dated: May 1, 2003

Attorneys for Plaintiffs

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**PARADISE PINES HOMEOWNERS ASSOCIATION**

and  $\gamma = \frac{1}{2}$  :

**PARADISE MANAGEMENT GROUP, INC. :**

and  $\beta$  :

## Defendants.

## CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the 1<sup>st</sup> day of May, 2003, a true and correct copy of the Plaintiff's Answer and Affirmative Defenses to Defendants' Counterclaim was served on the following via first class mail:

Francis Recchuiti, Esquire  
VANGROSSI & RECCHUITI  
319 Swede Street  
Norristown, PA 19401  
(Attorney for Defendants)

John C. Fenningham  
Maura F. Ratigan  
Attorneys for Plaintiff